

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION NO 1301 OF 1998

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be
allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the
fair copy of the Order ?

4. Whether this case involves a substantial
question of law as to the interpretation of
the Constitution of India, 1950 of any Order
made thereunder?

5. Whether it is to be circulated to the Civil
Judge?

RAJKOT MUNICIPAL CORPORATION
VERSUS

BALVANTRAY GIRDHARLAL BALDEV

Appearance:

MR AK CLERK for the Petitioner

MR VIRENDRA DAVE for MR YS LAKHANI for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 04/04/2000

C A V JUDGMENT

#. Heard learned counsel for the parties.

#. Under the Resolution No.681 dated 4/12/1991 of Standing Committee of the Municipal Corporation, Rajkot resolved to widen Ashapura and Kanak Roads. The respondents-herein who are having their shops on the roads which are to be widened felt aggrieved by this resolution filed Civil Suit No.170 of 1992 in the court of 3rd Joint Civil Judge (Sr. Division), Rajkot. In the application filed by the respondents prayer is made for grant of temporary injunction but the trial court rejected the same. They preferred an appeal and Joint District Judge, Rajkot under the impugned order allowed that appeal partly and the petitioner is prevented from executing and implementing the aforesaid resolution to the extent affecting the property in possession of the respondents herein. However, it is made clear that the petitioner is at liberty to execute and implement the said resolution for rest of the portion of the street-line to widen the road sought to be widened under the said resolution.

#. The learned counsel for the petitioner contended that it is a case where the learned court may not have come in the way of the development plan and the scheme of the Municipal Corporation, Rajkot. Widening of the road is very necessary as the traffic has been increased and it is for the benefits and welfare of the citizens of the Rajkot city. It has next been contended that at the most the respondents-plaintiffs are entitled for the compensation and they cannot create any obstruction in the work of development which is ultimately for the larger interest of the residents of the city. Lastly it is contended that the petitioner has given options to the respondents to select site at any one of three commercial complexes but they have not taken that benefit. Ultimately the corporation has taken back this offer.

#. The counsel for the plaintiffs-respondents contended that the respondents have suggested a site and requested the corporation to allot the same to them. The plaintiff-respondents are doing their business at the site for last many years and they have settled in the business and if at this stage they are forced to vacate that site their livelihood would come to an end and they will suffer manifold difficulties. It has next been contended it is a just and reasonable order which has been passed by the appellate court and to which this court may not interfere.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. It is a fact that the Municipal Corporation, Rajkot has given option to the respondents for site at three different commercial complexes and they have not availed of that opportunity. They insisted that the shop has to be allotted to them within that area only. Within the area concerned the land may not be available. I fail to see any justification in this insistence of the plaintiffs-respondents. It is a case of widening of the roads and they should not have come in the way more so where for their rehabilitation the Corporation has come with very fair and reasonable offer. It is also a fact that the plaintiffs-respondents suggested the land which is alleged to be available for the allotment to the respondents to raise construction of shops but so far no decision has been taken on this proposal.

#. I fail to see any justification in this approach of the counsel for the Corporation that as the plaintiffs-respondents have not earlier accepted the option given by the petitioner to them it is not obligatory on its part to give them any alternative site. The Corporation may or may not have any land available with it to allot the same to the respondents for construction of shops. It is true that while acquiring the land for public purpose the alternative accommodation may not be required to be allotted to the persons whose lands are acquired. But here it is a case where the Corporation has decided to give alternative accommodation to the respondents and this matter does not attain finality so long as the suit is not finally decided. Once the offer has been given and it is not accepted still it is open to the Corporation to give another land available to the respondents and if it is accepted by the respondents the matter ends. The interim relief is continued in favour of the petitioner for all these years. This court has not stayed the order of learned First Appellate Court. The suit is of the year 1992 that is 8 years old. So, the interest of justice will be met in case this revision application is disposed of in the terms that the interim relief granted by the First Appellate court shall continue till the decision of the suit and the learned trial court is directed to decide the suit itself within a period of 4 months from the date of the receipt of the writ of this order or certified copy thereof, whichever is earlier. The compliance of the order has to be reported to this court. In case the plaintiff-respondents adopt any dilatory tactics in disposal of the suit, liberty is granted to the petitioner for revision of the Civil Revision Application. So far as the offer for allotment of the alternative

accommodation is concerned it is still open to the parties to place before the trial court and trial court will decide the same in accordance with law.

Subject to the aforesaid term the Civil Revision Application and Rule stand disposed of. No order as to costs.

(S.K.Keshote, J.)

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